IN THE COURT

FOR

THE CORRECTION OF ERRORS.

JACK, A NEGRO MAN, *Plaintiff in Error*,

AGAINST

MARY MARTIN, *Defendant in Error*.

CASE ON THE PART OF THE PLAINTIFF IN ERROR.

New-York:
PRINTED BY JAMES VAN NORDEN,
No. 49 William-street.

1831.

IN THE SUPREME COURT OF JUDICATURE OF THE PEOPLE OF THE STATE OF NEW-YORK.

PLEAS before the Justices of the Supreme Court of Judicature of the People of the State of New-York, held at the city hall of the city of New-York, the first Monday of May, of May term, in the year of our Lord one thousand eight hundred and thirty-four. Witness, JOHN SAVAGE, *Esquire*, *Chief Justice*, HALLETT, PAIGE, HUBBARD, and OLIVER, *Clerks*.

State of New-York,
City and County of New-York, } ss.

THE people of the state of New-York have sent to the justices of the Superior Court of the city of New-York their writ close in these words, to wit:—The people of the State of New-York to the justices of the Superior Court of the city of New-York, greeting: because in the record and proceedings, and also in the giving of judgment, in a certain cause, which was in our said Court before you, between Jack, a negro man, plaintiff, and Mary Martin, defendant, in a plea of homine replegiando, as is said, manifest error hath intervened, to the great damage of the said Jack, as he complains; and we being willing that the error, if any, should be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then without delay you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our justices of the Supreme Court of Judicature, at the city hall of the city of New-York, on the first Monday of May next, together with this writ; that, the record and proceedings aforesaid being inspected by our said justices, we may further cause to be done thereupon for correcting that error,

what of right ought to be done. Witness, JOHN SAVAGE, Esquire, our Chief Justice, at the Capitol in the city of Albany, the first Monday of January, one thousand eight hundred and thirty-four.

R. SEDGWICK, *Attorney*,
PAIGE & HALLETT, *Clerks*.

To which said writ the justices of the Superior Court of the city of New-York aforesaid have, under their seal, distinctly and openly sent to the justices of the Supreme Court aforesaid their answer, in the words following, to wit:—The answer of the justices of the Superior Court of the city of New-York, in the within writ mentioned, the record and proceedings whereof mention is within made, with all things touching the same, are hereby respectively certified to the justices of the Supreme Court of Judicature within mentioned, in a certain schedule to this writ annexed, as within it is commanded. Witness, SAMUEL JONES, Esquire, Chief Justice of the Superior Court of the city of New-York, at the city hall of the said city, the first Monday of May, in the year 1834.

(L. S.) C. A. CLINTON, *Clerk*.

And which said schedule to the said writ annexed, is in the words and figures following, to wit:—

IN THE SUPERIOR COURT
OF THE CITY OF NEW-YORK.

PLEAS in the Superior Court of the city of New-York, held at the city hall of the city of New-York, in and for the city and county of New-York, before the justices of the same court, on the first Monday of September, of September term, in the year of our Lord one thousand eight hundred and thirty-three. Witness, SAMUEL JONES, Esquire, *Chief Justice*. CHARLES A. CLINTON, *Clerk*.

The people of the state of New-York have sent their writ close to the sheriff of the city and county of New-York, in the words and figures following, that is to say:—The people of the state of New-York to the sheriff of the city and county of New-York, greeting: Whereas it is sufficiently testified to us, that Jack, a negro man, is in the custody of Mary Martin, or in your custody; and that she, Mary Martin, claims the said Jack as a slave, or a person who owes her service, and detains him on

that account; and we being unwilling that the said Jack, if he be a freeman, should be destitute of the common law by such taking and claim, command you, that if the said Jack find you sufficient caution, &c. to be before our judges of the Superior Court of the city of New-York, on the first Monday of September next, at the city hall of the city of New-York, and to answer the said Mary Martin, if, &c., then cause the said Jack, in the mean time, to be replevied; and if the said Jack make you secure touching his claim, then put by gages, &c. the aforesaid Mary Martin that she be before our said judges on the aforesaid day, to answer the aforesaid Jack of the taking and claim aforesaid, and have then there the names of the pledges, and this writ. Witness, SAMUEL JONES, Chief Justice, at the city hall of the city of New-York, the first Monday of August, A. D. 1833.

R. SEDGWICK, Att'y.
C. A. CLINTON, Clerk.

And now at this day, that is to say, on the first Monday of September, of September term, in the year of our Lord one thousand eight hundred and thirty-three, before the justices of the said the Superior Court of the city of New-York, held at the city hall of the city of New-York, the said sheriff of the city and county of New-York returns the said writ, with his return thereto thereon endorsed, that when the said writ came to his hands, the therein named Jack was in his custody, under and by virtue of a writ of habeas corpus, issued by the honourable Richard Riker, recorder of the city of New-York; and that in consequence thereof, and because he was claimed by Mary Martin as her slave, he had not set at liberty the said Jack, but he still remained in his custody.

And hereupon the said Jack, by Robert Sedgwick his attorney, complains that the said Mary Martin heretofore, to wit, the twentieth day of August, in the year of our Lord one thousand eight hundred and thirty-three, at the city and in the county of New-York, took the said Jack, and taken, still holdeth.

And also, for that heretofore, to wit, on the twenty-third day of said August, and at the place aforesaid, the said Mary Martin falsely and maliciously took and held the said Jack for a long

space of time, and him still holds, upon a false pretence and allegation that the said Jack is the slave of the said Mary, and that she, the said Mary, has a just right to transport him, the said Jack, without the jurisdiction of the state of New-York, to wit, to New-Orleans: whereas, on the contrary, the said Jack is a freeman, to wit, at the city and county aforesaid.

And also, for that heretofore, to wit, on the twenty-third day of said August, and at the place last aforesaid, the said Mary Martin took and held the said Jack for a long space of time, and still holds, upon a false pretence and allegation that the said Jack is the slave of the said Mary, and that she, the said Mary, has a right to transport him, the said Jack, without the jurisdiction of the state of New-York, to wit, to New-Orleans, whereas, on the contrary, the said Jack is a freeman, to wit, at the city and county aforesaid.

Wherefore the said Jack says that he is injured, and has sustained damage to the value of two thousand dollars, and thereof he brings suit, &c.

And now at this day, that is to say, on the first Monday of October, of October term, in the year of our Lord one thousand eight hundred and thirty-three, to which day the said Mary Martin had leave to the declaration aforesaid to imparle and then to answer the same before the said justices of the said the Superior Court of the city of New-York, held at the city hall of the city of New-York, and for the city and county of New-York, comes the said Jack, a negro man, by his attorney afore said.

And the said Mary Martin, by Jesse M. Benedict her attorney, comes and well avows the taking of and detaining of the said Jack, a negro man, at the said place, at which, &c., and justly, &c., because she, the said Mary Martin, says, that heretofore, to wit, on the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and thirty, at New-Orleans, in the state of Louisiana, the said Jack, a negro man, was and ever since hath been, and still is the slave of her, the said Mary Martin, and as such slave bound to labour for, and owing service to her, the said Mary Martin, under the laws of the said state of Louisiana, for and during the life of him, the said Jack, a negro man, to wit, at the city and county of

New-York aforesaid. And the said Mary Martin further in fact says, that she, the said Mary Martin, was, during all the time aforesaid, and still is an inhabitant of New-Orleans aforesaid, to wit, at the city and county of New-York aforesaid. And the said Mary Martin in fact says, that before the said time in the said declaration mentioned, and whilst he, the said Jack, was so the slave of her, the said Mary Martin, to wit, on the fifth day of April, in the year aforesaid, he, the said Jack, at New-Orleans aforesaid, escaped from his said service at said New-Orleans, and fled into the state of New-York, to wit, at and into the said city and county of New-York; and there, to wit, at the said city and county of New-York, remained, against the will of the said Mary Martin, a fugitive from his service and labour aforesaid, until the arrest and seizure of him, the said Jack, hereinafter mentioned. And the said Mary Martin in fact further says, that after the said Jack had so escaped into the state of New-York, and before the said time in the said declaration mentioned, to wit, on the seventh day of August, in the year of our Lord one thousand eight hundred and thirty-three, at the city and county of New-York aforesaid, she, the said Mary Martin, presented to Richard Riker, Esquire, who then and there was recorder of the city of New-York, an affidavit setting forth minutely and particularly the claim of her, the said Mary Martin, to the services of the said Jack aforesaid, and setting forth that he, the said Jack, had escaped and fled into the state of New-York, at the time in that behalf aforesaid, and setting forth that he, the said Jack, at the time of so presenting such affidavit, was at Bunker's Mansion House, in Broadway, in said city of New-York. And the said Mary Martin further in fact says, that thereupon the said Richard Riker, Esquire, as such recorder, did then and there grant unto the said Mary Martin a writ of the people of the state of New-York, commonly called a writ of habeas corpus, issuing out of and under the seal of the Supreme Court of the state of New-York, tested in the name of John Savage, Chief Justice of said Supreme Court, at the academy in the town of Utica, the thirteenth day of July, in the year last aforesaid, and directed to the sheriff of the city and county of New-York; by which writ the people of the state of New-York commanded the said sheriff to take the said Jack, by the name and description of

Jack, a fugitive and runaway slave from New-Orleans, in the state of Louisiana, and being the property, as it is said, of Mary Martin, or by whatsoever name he might be called, and charged and to have him before the said Richard Riker, Esquire, recorder of the city and county of New-York, at his office, in the city hall, in the city of New-York, on the eighth day of August, in the year last aforesaid, at ten o'clock in the forenoon of that day, and to do and receive what should then and there be considered concerning the said Jack, a fugitive and runaway slave as aforesaid, to answer such claim of the said Mary Martin, and further commanded the said sheriff to have then and there that writ. And the said Mary Martin further in fact says, that the said writ was afterwards, to wit, on the said seventh day of August, delivered to Jacob Westervelt, Esquire, who then and there was, and at and after the return of the same writ continued to be sheriff of the said city and county of New-York, to be by him, as such sheriff, executed in due form of law. And the said Mary Martin further in fact says, that the said sheriff, after the said writ was so delivered to him as aforesaid, and before the return thereof, to wit, on the said seventh day of August, at the city and county of New-York, did, by virtue of such writ, arrest and take the body of the said Jack, and did afterwards, to wit, at the day, hour and place so for that purpose specified in said writ, bring him before the said Richard Riker, then yet being such recorder as aforesaid. And the said Mary Martin further in fact says, that at the day, hour and place so specified in said writ, the said recorder did proceed to have the proofs and allegations of the said Mary Martin and the said Jack, touching the matters of such writ; and such proceedings were thereupon had in that behalf, before said recorder, that afterwards, to wit, on the twenty-third day of August, in the year last aforesaid, at the city of New-York aforesaid, it did appear to the said Richard Riker, then yet being such recorder as aforesaid, that the said Mary Martin was entitled to the services of the said Jack; and thereupon he, the said Richard Riker, as such recorder, did then and there grant to the said Mary Martin a certificate, stating, among other things, that it satisfactorily appeared, that the said Jack owes service to the said Mary Martin, by the name and description of Mary

Martin, a resident of the city of New-Orleans, state of Louisiana, but then in the city and county of New-York; and allowing the said Mary Martin, or any agent by her to be appointed, to take the said Jack without any unnecessary delay, through and out of the state of New-York, on the direct route to New-Orleans, in the state of Louisiana; in which said certificate it was further stated, that the said Jack was about thirty-three years of age, about five feet four inches high, rather a light coloured negro, and of a thick make, having a scar over his left eye. And the said Mary Martin further in fact says, that the said Jack was then and there, by the said recorder, delivered into the custody of the said sheriff of the city and county of New-York, who was then and there appointed by the said Mary Martin to receive said Jack, for the purpose of his removal as aforesaid, to New-Orleans aforesaid; wherefore the said Mary Martin, at the said time, when, &c., took the said Jack, a negro man, and him taken, detained, as it was lawful for her to do, for the causes aforesaid, and this she, the said Mary Martin, is ready to verify; wherefore she prays judgment, and a return of the said Jack, a negro man, as her slave, to be adjudged to her, &c. And the said Mary Martin, by the leave of the court for this purpose first had and obtained, according to the form of the statute in such case made and provided, for a further avowry in this behalf, well avows the taking and detaining of the said Jack, a negro man, at the said time of the taking and detaining of the said Jack, a negro man, at the said place, at which, &c., and justly, &c., because the said Mary Martin says, that the said Jack, a negro man, at the said time of the taking and detaining of him as aforesaid, was and still is the slave of her, the said Mary Martin, to wit, at the city and county of New-York aforesaid; wherefore she, the said Mary Martin, him took, and taken, detained, as it was lawful for her to do, and this she is ready to verify; wherefore she, the said Mary Martin, prays judgment, and a return of the said Jack, a negro man, to be adjudged to her, &c. And the said Mary Martin, for a further avowry in this behalf, by leave of the court here for this purpose first had and obtained, and according to the form of the statute in such case made and provided, well avows the taking and detaining the said Jack, a negro man, at the said place, at which, &c.,

and justly, &c., because she, the said Mary Martin, says, that heretofore, to wit, on the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and thirty, at New-Orleans, in the state of Louisiana, the said Jack, a negro man, was and ever since hath been, and still is the slave of her, the said Mary Martin, and as such slave bound to labour for, and owing service to her, the said Mary Martin, under the laws of the said state of Louisiana, for and during the life of him, the said Jack, a negro man, to wit, at the city and county of New-York aforesaid. And the said Mary Martin further in fact says, that she, the said Mary Martin, on the day and year aforesaid, and from thence until and at and after the time of the escape hereinafter mentioned, was an inhabitant of New-Orleans aforesaid, to wit, at the city and county of New-York aforesaid. And the said Mary Martin in fact says, that before the said time in the said declaration mentioned, and whilst he, the said Jack, was so the slave of her, the said Mary Martin, to wit, on the fifth day of April, in the year aforesaid, he, the said Jack, at New-Orleans aforesaid, escaped from his said service at New-Orleans and fled into the state of New-York, to wit, at and into the said city and county of New-York, remained against the will of the said Mary Martin a fugitive from his service and labour aforesaid, until the arrest and seizure of him, the said Jack, hereinafter mentioned. And the said Mary Martin further in fact says, that after the said Jack had so escaped into the state of New-York, and before the time in the said declaration men tioned, to wit, on the seventh day of August, in the year of our Lord one thousand eight hundred and thirty-three, at the city and county of New-York aforesaid, she, the said Mary Martin, presented to Richard Riker, Esquire, who then and there was recorder of the city of New-York, an affidavit setting forth minutely and particularly the claim of her, the said Mary Martin, to the services of the said Jack as aforesaid, and setting forth that he, the said Jack, had escaped and fled into the state of of New-York, at the time in that behalf aforesaid, and setting forth that he, the said Jack, at the time of so presenting such affidavit, was at Bunker's Mansion House in Broadway, in the city of New-York. And the said Mary Martin further in fact says, that thereupon the said Richard Riker, Esquire, as

such recorder, did then and there grant unto the said Mary Martin a writ of the people of the state of New-York, commonly called a writ of habeas corpus, issuing out of and under the seal of the Supreme Court of the state of New-York, tested in the name of John Savage, Chief Justice of said Supreme Court, at the academy, in the town of Utica, the thirteenth day of July in the year last aforesaid, and directed to the sheriff of the city and county of New-York, by which writ the people of the state of New-York commanded the said sheriff to take the said Jack, by the name and description of Jack, a fugitive and runaway slave from New-Orleans, in the state of Louisiana, and being the property as it is said of Mary Martin, or by whatsoever name he might be called, and charged and to have him before the said Richard Riker, Esquire, recorder of the city and county of New-York, at his office in the city hall in the city of New-York, on the eighth day of August in the year last aforesaid, at ten o'clock in the forenoon of that day, and to do and receive what should then and there be considered concerning the said Jack, a fugitive and runaway slave as aforesaid, to answer such claim of the said Mary Martin; and further commanded the said sheriff to have then there that writ. And the said Mary Martin further in fact says, that the said writ was afterwards, to wit, on the said seventh day of August, delivered to Jacob Westervelt, Esquire, who then and there was, and at and after the return of the same writ continued to be sheriff of the city and county of New-York, to be by him as such sheriff executed in due form of law. And the said Mary Martin further in fact says, that the said sheriff, after the said writ was so delivered to him as aforesaid, and before the return thereof, to wit, on the seventh day of August, at the city and county of New-York, did, by virtue of such writ, arrest and take the body of the said Jack, and did, afterwards, to wit, at the day, hour and place so for that purpose specified in said writ, bring him before the said Richard Riker, then yet being such recorder as aforesaid. And the said Mary Martin further in fact says, that at the day, hour and place so specified in the said writ, the said recorder did proceed to hear the proofs and allegations of the said Mary Martin and the said Jack, touching the matter of such writ; and such proceedings were thereupon

had in that behalf before said recorder, that afterwards, to wit, on the twenty-third day of August, in the year last aforesaid, at the city of New-York aforesaid, it did appear to the said Richard Riker, then yet being such recorder as aforesaid, that the said Mary Martin was entitled to the services of the said Jack; and thereupon he, the said Richard Riker, as such recorder, did then and there grant to the said Mary Martin a certificate, stating (among other things) that it satisfactorily appeared that the said Jack owes service to the said Mary Martin, and allowing the said Mary Martin, or any agent by her to be appointed, to take the said Jack, without any unnecessary delay, through and out of the state of New-York, on the direct route to New-Orleans, in the state of Louisiana; in which said certificate it was further stated that the said Jack was about thirty-three years of age, about five feet four inches high, rather a light-coloured negro, and of a thick make, having a scar over his left eye. And the said Mary Martin further in fact says, that the said Jack was then and there by the said recorder delivered into the custody of the sheriff of the city and county of New-York, who was then and there by the said Mary Martin appointed to receive said Jack for the purpose of his removal as aforesaid to New-Orleans aforesaid: wherefore the said Mary Martin, at the said time, when, &c. took the said Jack, a negro man, and him taken, detained, as was lawful for her to do for the causes aforesaid: and this she, the said Mary Martin, is ready to verify; wherefore she prays judgment, and a return of the said Jack, a negro man, as her slave, to be adjudged to her, &c.

And the said Jack, as to the said avowry by the said Mary Martin first above made, saith, that he, the said Jack, by reason of any thing by her in that avowry above alleged, ought not to avow the taking and detaining of him, the said Jack, because he saith, protesting, that the said Richard Riker never did make or issue any such certificate as is in that behalf in the said avowry alleged; because he saith that the said Mary Martin at the time of taking him, the said Jack, as is in his said declaration in that behalf alleged, was and still is wholly and entirely a resident of the city and county of New-York, and not of the city of New-Orleans, or elsewhere out of the said city and

county of New-York; and this he, the said Jack is ready to verify. Wherefore, inasmuch as the said Mary Martin hath acknowledged the taking and detaining of him, the said Jack, he, the said Jack, prays judgment and his damages, by reason of the taking and unjust detaining him as aforesaid to be adjudged to him.

And for a further plea in this behalf, to the said first avowry of the said Mary Martin, the said Jack, by leave of the court here for that purpose first had and obtained, saith, that the said Mary Martin, at the time of taking and obtaining him, the said Jack, as in his said declaration in that behalf alleged, was a citizen of the state of New-York, and could not lawfully hold the said Jack as a slave, and this the said Jack is ready to verify: wherefore inasmuch as the said Mary Martin hath acknowledged the taking and detaining him, the said Jack, he, the said Jack, prays judgment and his damages by reason of the taking and unjustly detaining him as aforesaid, to be adjudged to him, &c.

And for a further plea in this behalf, to the said first avowry of the said Mary Martin, the said Jack, by leave of the court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, saith, that the said Mary Martin, by reason of any thing in her said avowry alleged, ought not to avow the taking and detaining of the said Jack, because he says that—heretofore, while the said Mary Martin held him the said Jack to service, and claimed he was the slave of the said Mary Martin by the laws of the state of Louisiana aforesaid, she, the said Mary, being then and before that time a resident of New-Orleans aforesaid, in the said state, to wit, on the first day of March, A. D. 1833, removed from New-Orleans aforesaid to the city of New-York, and thereby then and there became a resident of the city of New-York, and a citizen of the state of New-York, to wit at the city and county of New-York aforesaid, by means whereof the said Jack became a *free man*. And this he, the said Jack, is ready to verify; wherefore, inasmuch as she, the said Mary Martin, hath acknowledged the taking and detaining of the said Jack, he, the said Jack, prays judgment and his damages by reason of the unjust taking and detaining him as aforesaid, to be adjudged to him.

And the said Jack, as to the said avowry of the said Mary Martin, by her secondly above made, saith, that by reason of any thing therein contained, the said Mary ought not to avow the taking and detaining the said Jack, because he saith that he, the said Jack, at the time of taking and detaining him as aforesaid, was not the slave of the said Mary, but was a free man, to wit, at the city and county of New-York, and this he, the said Jack, prays may be inquired of by the country, and the said Mary doth the like, &c.

And the said Jack, as to the avowry of the said Mary Martin, by her thirdly above made, saith, that by reason of any thing therein contained, the said Mary Martin ought not to avow the taking and detaining of the said Jack, because he saith, that at the time of the taking and detaining of him, the said Jack, as in the said declaration mentioned, he, the said Jack, was a free, man, and not the slave of the said Mary, nor in any manner owing her service, to wit, at the city and county of New-York aforesaid ; and this he is ready to verify. Wherefore, inasmuch as the said Mary hath acknowledged the taking and detaining of the said Jack, he prays judgment and his damages by reason of the taking and unjustly detaining him as aforesaid, to be adjudged to him, &c.

And the said Mary Martin saith, that the said plea in bar of the said Jack, by him firstly above pleaded to the said first avowry of the said Mary Martin, and the matters in said plea in bar contained, are not sufficient in law to bar her, the said Mary Martin, from having judgment on her said first avowry, and a return of the said Jack as her slave, and that she, the said Mary Martin, is not bound by the law of the land to answer the same, and this she the said Mary Martin is ready to verify: wherefore, for want of a sufficient plea in bar in this behalf, she, the said Mary Martin, as before, prays judgment and a return of the said Jack, a negro man, as her slave, to be adjudged to her, &c.

And the said Mary Martin saith, that the said plea in bar of the said Jack, by him secondly above pleaded to the said first avowry of the said Mary Martin, and the matters in said plea in bar contained, are not sufficient in law to bar her, the said Mary Martin, from having judgment on her said first avowry, and a

return of the said Jack as her slave, and that she, the said Mary Martin, is not bound by the law of the land to answer the same, and this she, the said Mary Martin, is ready to verify: wherefore, for want of a sufficient plea in bar in this behalf, she, the said Mary Martin, as before, prays judgment and a return of the said Jack, a negro man, as her slave, to be adjudged to her, &c.

And the said Mary Martin saith, that the said plea in bar of the said Jack, by him thirdly above pleaded to the said first avowry of the said Mary Martin, and the matters in the said plea in bar contained, are not sufficient in law to bar her, the said Mary Martin, from having judgment on her said first avowry, and a return of the said Jack as her slave; and that she, the said Mary Martin, is not bound by the law of the land to answer the same, and this she the said Mary Martin is ready to verify: wherefore, for want of a sufficient plea in bar in this behalf, she, the said Mary Martin, as before, prays judgment and a return of the said Jack, a negro man, as her slave, to be adjudged to her, &c.

And the said Mary Martin, as to the said plea in bar of the said Jack, to the said third avowry of her, the said Mary Martin, saith, that she, by reason of any thing by the said Jack in that plea above alleged, ought not to be barred from avowing the taking of the said Jack, at the said place at which, &c., and justly &c.; because as she saith, that before and at the said time of the taking and detaining of him, the said Jack, as in the said declaration mentioned, he, the said Jack, was the slave of the said Mary Martin, owing her service in manner and form as she, the said Mary Martin, hath before above in her said third avowry alleged, and not in any manner a free man, as he, the said Jack, hath above in his said plea to the said third avowry alleged; and of this she, the said Mary Martin, puts herself upon the country, &c.

And the said Jack saith, that the said plea in bar of the said Jack, by him first above pleaded to the said first avowry of the said Mary Martin, and the matters in the said plea in bar contained, are sufficient in law to bar the said Mary Martin from having judgment on her said first avowry, and a return of the said Jack as her slave, and which said plea in bar, and the matters therein contained, the said Jack is ready to verify and

prove as the court here shall direct and award; and because the said Mary Martin hath not answered the said plea in bar, nor in any manner denied the same, the said Jack, as before, prays judgment and his damages, by reason of the taking and unjustly detaining him as aforesaid, to be adjudged to him, &c.

And the said Jack saith, that the said plea in bar of the said Jack, by him secondly above pleaded to the said first avowry of the said Mary Martin, and the matter in said plea in bar contained, are sufficient in law to bar the said Mary Martin from having judgment on her said first avowry, and a return of the said Jack as her slave; and which said plea in bar, and the matters therein contained, the said Jack is ready to verify and prove as the court here shall direct and award. And because the said Mary Martin hath not answered the said plea in bar, nor in any manner denied the same, the said Jack, as before, prays judgment, and his damages, by reason of the taking and unjustly detaining him as aforesaid, to be adjudged to him, &c.

And the said Jack saith, that the said plea in bar of the said Jack, by him thirdly above pleaded to the said first avowry of the said Mary Martin, and the matter in the said plea in bar contained, are sufficient in law to bar the said Mary Martin from having judgment on her said first avowry, and a return of the said Jack as her slave; and which said plea in bar, and the matters therein contained, the said Jack is ready to verify and prove as the court here shall direct and award. And because the said Mary Martin hath not answered the said plea in bar, nor in any manner denied the same, the said Jack, as before, prays judgment and his damages, by reason of the taking and unjustly detaining him as aforesaid, to be adjudged to him, &c.

Therefore, to try the issue above joined, whereof the parties have put themselves upon the country, let a jury thereupon come at the next term of this court, to be held at the city hall of the city of New-York, in and for the city and county of New-York, before the justices of the same court, the first Monday of November next, twelve, &c., each of whom, &c., who neither, &c., to recognise, &c., because as well, &c., the same day is given to the parties here, &c.

And because the said court, before the aforesaid justices thereof now here, are not yet advised what judgment to give of

and upon the premises whereof the parties have put themselves upon the judgment of the court, a day is therefore given to the parties aforesaid, before the said justices of the said the Superior Court of the city of New-York aforesaid, at the city hall of the city of New-York, until the first Monday of November next, to hear the judgment of the said court thereupon, for that the said court, before the aforesaid justices thereof now here, are not yet advised thereof, &c.

At which day, that is to say, on the first Monday of November, of November term, in the year of our Lord one thousand eight hundred and thirty-three, in this same court aforesaid, before the justices thereof aforesaid, at the place aforesaid, come the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury aforesaid do not come therefore as before to try the said issue above joined between the parties aforesaid, whereof they have put themselves upon the country; let a jury thereupon come at the next term of the said the Superior Court of the city of New-York, to be held at the city hall of the city of New-York, in and for the city and county of New-York, before the justices of the same court, on the first Monday of December next, twelve, &c., each of whom, &c., who neither, &c., to recognise, &c., because as well, &c., the same day is given to the parties here, &c.

And because the said court, before the aforesaid justices thereof now here, are not yet advised what judgment to give of and upon the premises, whereof the said parties have put themselves upon the judgment of the court, a day is therefore given to the parties aforesaid, before the said justices of the said the Superior Court of the city of New-York aforesaid, at the city hall of the city of New-York, until the first Monday of December next, to hear the judgment of the said court thereupon, for that the said court, before the aforesaid justices thereof now here, are not yet advised thereof, &c.

At which day, that is to say, on the first Monday of December, of December term, in the year of our Lord one thousand eight hundred and thirty-three, in this same court aforesaid, before the aforesaid justices thereof, at the place aforesaid, come the parties aforesaid, by their respective attorneys aforesaid, and the jurors of the jury aforesaid, do not come.

And thereupon all and singular the premises being seen, whereof the said parties have put themselves upon the judgment of the court, and by the said court, before the aforesaid justices thereof now here, fully understood, and mature deliberation being thereupon had, it is considered by the said court, that the said plea in bar of the said Jack, by him firstly above pleaded to the said first avowry of the said Mary Martin, and the matters in the said plea in bar contained, are not sufficient in law to bar her, the said Mary Martin, from having judgment on her said first avowry, and a return of the said Jack as her slave, and that she, the said Mary Martin, is not bound by the law of the land to answer the same.

And that the said plea in bar of the said Jack, by him secondly above pleaded to the said first avowry of the said Mary Martin, and the matters in said plea in bar contained, are not sufficient in law to bar her, the said Mary Martin, from having judgment on her said first avowry, and the return of the said Jack as her slave, and that she, the said Mary Martin, is not bound by the law of the land to answer the same.

And that the said plea in bar of the said Jack, by him thirdly above pleaded to the said first avowry of the said Mary Martin, and the matters in the said plea in bar contained, are not sufficient in law to bar her, the said Mary Martin, from having judgment on her said first avowry, and a return of the said Jack as her slave, and that she, the said Mary Martin, is not bound by the law of the land to answer the same.

And it is further considered by the said court, before the aforesaid justices thereof now here, that for a want of a sufficient plea in bar in this behalf to the said first avowry of her, the said Mary Martin, the said Jack, a negro man, take nothing by his said writ, but that he and his said caution, &c., be in mercy, &c., and that the said Mary Martin do go thereof without day.

And it is further considered, that the said Mary Martin had good right and lawful authority to take the said Jack, and him taken, to detain in manner and form as she, the said Mary Martin, in her said first avowry hath alleged; and therefore, it is commanded to the sheriff of the city and county of New-York, that from causing the said Jack to be replevied by virtue of the

aforesaid writ of the people to him, the said sheriff, in that behalf directed, he, the said sheriff, entirely supersede; and that from further detaining or holding him, the said Jack, on pretence of the same writ, he, the said sheriff, do altogether supersede.

Judgment signed this seventeenth day of January, in the year of our Lord one thousand eight hundred and thirty-four.
THOS. J. OAKLEY.

And it is further considered by the said court, before the aforesaid justices thereof, that the said Mary Martin do recover against the said Jack one hundred and thirteen dollars and seventy-seven cents, for her costs and charges, by her about her defence in this behalf expended, now here before the aforesaid justices taxed and adjudged to her, according to the form of the statute in such case made and provided, and that she have execution thereof, &c. &c.

Filed, January 17, 1834, at 33 minutes past 10 o'clock, A. M.

Afterwards, that is to say, on the first Monday in May, A. D. eighteen hundred and thirty-four, before the Supreme Court of Judicature of the people of the state of New-York, at the city hall of the city of New-York, comes the said Jack, by his attorney aforesaid, and says, that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error, in this, that the avowries aforesaid, and the matters therein contained, were not sufficient in law for the said Mary to hold and detain the said Jack; and also there is error in this, that the judgment aforesaid, by the record aforesaid, appears to have been given for the said Mary against the said Jack, whereas, by the law of the land, the said judgment ought to have been given for the said Jack against the said Mary. And the said Jack prays, that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record being, may be reversed, annulled, and altogether holden for nought, and that he may be restored to all things which he has lost by occasion of the said judgment.

And hereupon afterwards, to wit, on the first Monday of May, of May term, in the year of our Lord one thousand eight

hundred and thirty-four, the said Mary Martin, by Jesse W. Benedict, her attorney, freely comes here into court, and says, that in the record and proceedings aforesaid, or in giving the judgment aforesaid, there is no error; and she prays, that the said Supreme Court of Judicature, before the aforesaid justices thereof now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

And because the said court, before the aforesaid justices thereof now here, are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, before the said justices of the Supreme Court of Judicature aforesaid, at the academy in the city of Utica, until the first Monday of July next, to hear the judgment of the said court thereupon; for that the said court, before the aforesaid justices thereof now here, are not yet advised thereof, &c.; at which day, before the said justices of the Supreme Court of Judicature aforesaid, at the academy in the city of Utica, come as well the said Jack, by his attorney aforesaid, as the said Mary Martin, by her attorney aforesaid. Whereupon, as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid, by the said Jack, a negro man, above for error assigned, being seen, and by the said Supreme Court, before the aforesaid justices thereof now here, fully understood, and mature deliberation being thereupon had, it appears to the said Supreme Court, before the aforesaid justices thereof now here, that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid. Therefore, it is considered by the said Supreme Court, before the aforesaid justices thereof now here, that the judgment aforesaid, in form aforesaid given, be in all things affirmed, and stand in full force and effect, the several matters above for error assigned in any wise notwithstanding. And it is further considered by the said Supreme Court, before the aforesaid justices thereof now here, that the said Mary Martin had good right and lawful authority to take the said Jack, and him taken to detain, in manner and form as she, the said Mary Martin, in her said first avowry hath alleged. And therefore it is com-

manded to the sheriff of the city and county of New-York, that from causing the said Jack to be replevied by virtue of the aforesaid writ of the people issued out of the said Superior Court, to him the said sheriff in that behalf directed, he, the said sheriff, entirely supersede, and from further detaining or holding him, the said Jack, on pretence of the same writ, he, the said sheriff, do altogether supersede.

And it is further considered by the said Supreme Court, before the aforesaid justices thereof now here, that the said Mary Martin do recover against the said Jack, a negro man, as well her costs and charges aforesaid, so as aforesaid taxed and adjudged to her by the said Superior Court, as also one hundred and twenty dollars and eighty-two cents, by the said Supreme Court, before the aforesaid justices thereof now here, adjudged to the said Mary Martin, according to the form of the statute in such case made and provided, for her costs and charges which she hath sustained and expended, in and about her defence on the said writ of error, which said costs and charges in the whole amount to two hundred and thirty-four dollars and fifty-nine cents, and that the said Mary Martin have execution thereof, &c.

And the said Jack, a negro man, in mercy, &c.

Judgment signed the twenty-eighth day of July, one thousand eight hundred and thirty-four.

W. P. Hallett, *Cl.*

IN THE COURT FOR THE CORRECTION OF ERRORS.

Jack, a Negro Man,
vs.
Mary Martin.

Afterwards, to wit, on the twenty-third day of August, eighteen hundred and thirty-four, before the president of the senate, senators, and chancellor of the state of New-York, in the Court for the Correction of Errors of the state of New-York, at the said city of New-York, comes the said Jack, by his attorney aforesaid, and says, that in the record and proceedings aforesaid, and in giving the judgments of the said Superior Court and the said Supreme Court aforesaid, there is

manifest error in this, to wit, that the avowries aforesaid, and the matters therein contained, are not sufficient in law for the said Mary Martin to hold and detain the said Jack; and there is error also in this, that the judgment aforesaid of the said Superior Court, by the record aforesaid, appears to have been given for the said Mary Martin against the said Jack, whereas, by the law of the land, the said judgment ought to have been given for the said Jack, against the said Mary Martin. And also there is error in this, that the judgment of the said Superior Court aforesaid, is affirmed in all things by the said Supreme Court of Judicature of the people of the state of New-York, whereas, by the law of the land, the same ought to have been reversed.

And the said Jack prays that the judgment aforesaid of the said Superior Court, and the judgment of the said Supreme Court thereon, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for nought, and that he may be restored to all things which he hath lost by occasion of the said judgment.

R. Sedgwick, *Att'y and of Counsel.*

IN THE COURT FOR THE TRIAL OF IMPEACHMENTS AND CORRECTION OF ERRORS.

Mary Martin, *Defendant in Error*, } ads. Jack, a Negro Man, *Plaintiff in Error.*

And hereupon the said Mary Martin, by Jesse W. Benedict, her attorney, freely comes here before the said president of the senate, senators, and chancellor, in the said Court for the Trial of Impeachments and Correction of Errors, at the city of Albany, and says, that there is not any error in the record and proceedings aforesaid, or in giving the judgment aforesaid; and she prays that the said Court for the Trial of Impeachments and Correction of Errors here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above for error assigned, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.; but because, &c.

J. W. Benedict, *Att'y for Defendant in Error.*
Charles O'Connor, *of Counsel.*

JACK, a Negro Man,
vs.
MARY MARTIN.
} *By the Court*, NELSON, J.

The constitution of the United States, art. 4, sec. 2, sub. 3, provides, that "no person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim of the party to whom such service or labour may be due." At the second session of the second congress under the constitution, an act was passed to carry into effect this part of the foregoing article, substantially as follows: That when any person held to labour in any of the United States, or in either of the territories under the laws thereof, shall escape into any other of the said states or territories, the person to whom such labour may be due, his agent or attorney, is empowered to seize or arrest such fugitive, and to take him or her before any judge of the Circuit or District Courts of the United States, residing or being within the state, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made; and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit, taken before and certified by a magistrate of any such state or territory, that the person so seized, doth, under the laws of the state or territory from which he or she fled, owe service to the person thus detaining him or her, it shall be the duty of such judge or magistrate to give a certificate to the claimant, his agent or attorney, which shall be a sufficient warrant for removing said fugitive to the state or territory from which he or she fled. The 4th section makes it penal for any one knowingly to obstruct or hinder such claimant, agent or attorney, in seizing or arresting the fugitive, or for rescuing him after arrest in pursuance of the authority given in the 3d section; or for harbouring or concealing him or her, knowing him or her to be a fugitive from labour as above. The case under consideration is supposed to involve the constitutionality of this law of congress, and in result that of this state, (2 R. S. 560. sec. 6 to 19 inclusive,) which provides for the arrest of fugitive slaves in a manner in some respects different

from the law of congress, and gives to the slaves the writ of *homine replegiando* against the person or agent claiming their service, and suspends all proceedings before the judge or magistrate, and the caption or removal of such fugitives under the certificate, till final judgment shall be given on this writ. This replevin suit is under the above provision of the state law, and the defendant, in the Superior Court, set up in defence the fact, that the plaintiff was her slave, and then acknowledged the taking by virtue of proceedings alleged to be in conformity to the above act of congress. To this the plaintiff replied by way of plea, that at the time of the seizure, the defendant was a citizen of the state of New-York, and incapable by the laws of that state to hold him in slavery. Under a common principle of pleading, that every material fact properly set forth and not denied by the adverse party is admitted, the facts that the plaintiff owed service to the defendant under the laws of the state of Louisiana; that he fled from that state and service into the state of New-York, remained there against her will, a fugitive from her service till the seizure; and the seizure under the act of congress as set forth in the avowry, are all admitted on the record. The demurrer also admits the fact set forth in the plea, i. e. that the defendant was a citizen of this state at the time of the arrest. If this plea should be determined defective, under another familiar rule of pleading, the plaintiff has a right on the argument to go back to the avowry and test its sufficiency, and hence the question of the constitutionality of the law of congress and of this state may be legitimately raised. I assume for the present, that the proceedings before the recorder were substantially in conformity to the act of congress, and may be sustained thereby if it is valid. In order to determine the force and effect of the respective statutes, and to ascertain which is entitled to paramount authority, we must go back to the source of power—the provision of the constitution, that being conceded to be supreme, and any law in pursuance thereof controlling. The first clause is merely prohibitory upon the states, and forbids the enactment of any law, or the adoption of any regulation in the case of a fugitive slave, by which he may be discharged from the service of his master; and this prohibition upon the state power thus far, is unqualified and

complete, as it necessarily includes a restriction against any measure tending in the slightest degree to impair the right to such service, no "law or regulation" of a state being permitted to discharge it; the claim or title of the owner remains as perfect within the jurisdiction of the state to which the fugitive has fled after his arrival, and during his continuance, as it was in and under the laws of the state from which he escaped. The service there due, and the escape being established, so explicit are the terms of the constitution, no rightful authority can be exercised by the state to vary the relation existing between the parties. To this very qualified extent slavery may be said still to exist in a state, however effectually it may have been denounced by her constitution and laws. On this point there can be no diversity of opinion as to the intent and meaning of this provision; the doubt arises upon the construction to be given to the next clause, "but shall be delivered up on claim of the party to whom such service or labour may be due." The counsel for the plaintiff in error contends, the mode of making the claim, and of delivering up the fugitive is a subject exclusively of state regulation, with which congress has no right to interfere; and upon this view the constitutionality of the law of this state is sought to be sustained. I apprehend it can be defended upon no other ground than the one taken; for if the power of the state to legislate on this subject is only concurrent with congress, after the exercise of it by that body in enacting the law of 1793 it would be incompetent for the state authorities to act in the matter. That law must be paramount from necessity, to avoid the confusion of adverse and conflicting legislation. So far as the states are concerned, the power when thus exercised is then exhausted, and though they might have desired a different legislation on the subject, they cannot amend, qualify, or in any manner alter it. This is the rule, as I understand it, settled by authority in regard to the construction of the concurrent powers of legislation in the states, and which is conceded to be binding upon the state tribunals on questions arising under the constitution and laws of the United States. *Sturgess* v. *Crowninshield*, 4 *Wheat.* 193. *Houston* v. *Moore*, 5 *ibid.* 1. *See also Livingston* v. *Van Ingen*, 9 *J. R.* 561. 66. 68. 75. 13 *Mass.* 16. 3 *Serg. and Rawle*, 179. 1 *Kent*,

387. 3 *Cow.* 716. 51. 53, *Steam-boat Co.* v. *Livingston.* This principle is undoubtedly essential to peace and harmony in the action of the two governments. If the power of each in its sphere was exclusive throughout, there would be no reason or necessity for its application, for then there could be no collision without usurpation. But as there is a large mass of concurrent powers belonging in common to each in the arrangement of the system, confusion would have inevitably followed their operations, if one of them had not been made paramount. It was therefore provided, (art. 2, sec. 2,) that "this constitution, and the laws of the United States which should be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or in the laws of any state to the contrary notwithstanding." Wherever congress can lawfully act under the constitution, their judgment and discretion are supreme on the subject of this provision, and in the exercise of concurrent powers the states must necessarily be subordinate. Neither can the states exercise a concurrent power in conjunction with congress, without their express permission; for the right to do so would be in derogation of their paramount authority, and lead to all the evil it was designed to avoid. Though the act of the state might not be in direct repugnance to the legislation of congress, it does not follow that it is not so in legal effect: for it has been correctly said, that the will of congress may be discovered as well by what they have not declared as by what they have expressed; that two distinct wills cannot at the same time be exercised in relation to the same subject effectually, and at the same time be compatible with each other. If they correspond in every respect, then the latter is idle and inoperative; if they differ, they must in the nature of things oppose each other so far as they differ. If this conclusion be correct, to sustain the legislature of the state under the clause of the constitution in question, it is indispensable to show their power to be exclusive; as congress have already passed a law to carry it into execution. It is material to look into the object of this clause of the constitution; the evil to be guarded against, and the nature and character of the rights to be protect-

ed and enforced, in order to comprehend its meaning and determine what powers and their extent may be rightfully claimed under it. At the adoption of the constitution, a small minority of the states had abolished slavery within their limits, either by positive enactment or judicial adjudication ; and the southern states are known to have been more deeply interested in this slave labour than those of the north, where slavery yet to some extent existed, but where it must have been seen it would probably soon disappear. It was natural for that portion of the Union to fear that the latter states might, under the influence of this unhappy and exciting subject, be tempted to adopt a course of legislation that would embarrass the owners pursuing their fugitive slaves, if not discharge them from service, and invite escape by affording a place of refuge. They already had some experience of the perplexities in this respect under the confederation, which contained no provision on the subject; and the serious and almost insurmountable difficulties that this species of property occasioned in the convention generally, was well calculated to confirm their strongest apprehensions. To this source must be attributed, no doubt, the provision of the constitution, and which directly meets the evil, by not only prohibiting the states from enacting any regulation discharging the slave from service, but by directing that he shall be delivered up to the owner. It implies a doubt whether they would, in the exercise of unrestrained power, regard the rights of the owner, or properly protect them by local legislation. The object of the provision being thus palpable, it should receive a construction that will operate most effectually to accomplish the end consistent with the terms of it. This we may reasonably infer will be in accordance with the intent of the makers, and will regard with becoming respect the rights of those especially interested in its execution. Which power then was it intended should be charged with the duty of prescribing the mode in which this injunction of the constitution should be carried into effect; and of enforcing its execution, the states or congress? It is very clear, if left to the former, the great purpose of the provision might be defeated, in spite of the constitution. The states might omit any legislation on the subject, and thereby leave the owner without any known means by which to assert his

rights: or they might so encumber and embarrass the prosecution of them, as to be tantamount to a denial. That all this could not be done or omitted without disregarding the spirit of the constitution is true; but the provision itself is founded upon the assumption that without it the acknowledged rights of the owners would not be observed or protected: it was made in express terms, to guard against a possible act of injustice by the state authorities. The idea that the framers of the constitution intended to leave the regulation of this subject to the states, when the provision itself obviously sprung out of their fears of partial and unjust legislation by them in respect to it, cannot readily be admitted. It would present an inconsistency of action and an unskilfulness in the adoption of means for the end in view, too remarkable to have been overlooked by a much less wise body of men. They must naturally have seen and felt that the spirit apprehended to exist in the states, which made this provision expedient, would be able to frustrate its object in regulating the mode and manner of carrying it into effect. That the remedy of the evil, and the security of rights, would not be complete unless this power was also vested in the national government. This consideration requires additional force, when we take in connexion the fact, that upon the supposition of exclusive state power to legislate, the owner could not resort to the national judiciary for an exposition of the state law, or to review the adjudications of the state tribunals. Their decision would be final. When the power of the state to legislate over a given subject is concurrent with congress, the appellate jurisdiction of the national judiciary may be invoked to review and correct the errors of the state judiciary. This right is derived from the clause in the constitution which provides, that "the judicial powers shall extend to all cases in law and equity arising under this constitution, the laws of the United States, &c., art. 3, sec. 2. See also, sub. 2, which gives appellate jurisdiction, and is deemed essential to the authority and efficiency of the general government. If the power of the state legislation is exclusive, it is then like the great mass of the power belonging to it, and where the law can be expounded and enforced only by the state tribunals, with the excepted case of the owner being a resident of another state. The right of

review would then rest upon the residence of the party, and not upon the nature of the subject matter, and in no way weakens the view taken. Upon the construction, then, contended for by the plaintiff in error, whatever might be the regulation of the states as to the claim of the owner under the constitution, or however vexatious and embarrassing might be the conditions annexed to the surrender of the fugitive, their action would be final and conclusive, and beyond the reach of the national government to afford a remedy. I am also satisfied, from an attentive perusal of this provision, that a fair interpretation of the terms in which it is expressed, not only prohibits the states from legislation upon the question involving the owner's right to this species of labour, but that it is intended to give to congress the power to provide the delivering up of the slave. It is peremptory and unqualified, that he "shall be delivered up upon claim of the party to whom such service or labour may be due." The right of the owner to reclaim the fugitive in the state to which he fled has been yielded up to him by the states. Without this provision, it would have been competent for them to have wholly denied such claim, or to have qualified it at discretion. All this power they have parted with; and the owner now has not only an unqualified right to the possession, but he has the guaranty of the constitution in respect to it. It is obvious, if congress have not the power to prescribe the mode and manner of the "delivering up," and thereby provide the means of enforcing the execution of the rights secured by this provision, its solemn guaranty may be wholly disregarded in spite of the government. The power seems indispensable to enable it faithfully to discharge the obligation to the states and citizens interested. The subject itself, as well from its nature as from the persons alone interested in it, seems appropriately to belong to the national government. It concerns rights held under the laws, to be enforced within the jurisdiction of states other than those in which the citizens generally interested in them reside, and on a subject, too, known deeply to affect the public mind, and in respect to which distinct and adverse interests and views had already appeared in the Union. It was therefore fit and proper that the whole matter should be placed under the control of congress, where the rights and interests of the different

sections of the country liable to be influenced by local and peculiar causes, would be regulated and enforced with an independent and impartial regard to all. It was a subject affecting citizens at the time in almost every part of the Union, more or less; a uniform rule respecting which was desirable, and could be attained only by placing it under the action of the national government. We may add also, that as the power of legislation belonging to the states is in no instance derived from the constitution of the United States, but flows from their own sovereign authority, any law they might pass on the subject would not be binding beyond their jurisdiction, and any precept or authority given in pursuance of it would convey none to the owner to remove the fugitive beyond it: the authority of each state through which it was necessary to pass would become indispensable. The above view is in strict accordance with the decisions of this court upon the clause in question, as far as it has come under observation, and also with those under the analogous provision respecting fugitives from justice. The case of *Glen* v. *Hodges*, 9 *J. R.* 67, was an action of trespass for taking out of the possession of a citizen of this state a negro slave who had escaped into Vermont. The owner pursued and seized him there, and he was forcibly taken out of his custody by a public officer, under the attachment law of that state for debt, and which was set up in justification by the defendant, in whose favour it issued. The court say, "he (the slave) was held to service or labour under the laws of this state when he escaped, and the escape did not discharge him, but the master was entitled to reclaim him in the state to which he fled." This is according to a provision in the constitution of the United States, (art. 4, s. 2;) and the act of Congress of 12 February, 1793, (Laws of U. S. vol. ii. 165,) prescribes the mode of reclaiming the slave. The court decided, that the proceedings under the attachment, which were regular, formed no justification for the taking: so complete was the right of the owner under the constitution and laws. The provision of the constitution respecting fugitives from justice, is found in the same section and article with the one in question, and is as follows: "a person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another

state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime." The same act of congress of 1793, has provided for carrying this provision into effect. It is quite clear from the language of this provision, that the arguments in favour of the power of exclusive state legislation, and of course to regulate the manner of charging the crime, of making the demand by the executive, and of delivering up the fugitive to be removed, is stronger; and the reasons against the practical exercise of it, independently of the language, much less cogent and conclusive than those under the clause in question. Every state is alike interested in the detection and punishment of public offenders, and there could be but little apprehension that this power would not have been faithfully executed under the regulation of state authorities; yet the power of congress over the subject has never been doubted in this state so far as my observation extends, nor have the states undertaken to legislate in respect to it. In the matter of *Clark*, 9 *Wend.* 219, which was a case under this clause, the chief justice recognised the binding effect of the law of 1793, and considered the proceedings in conformity to it as conclusive upon the state courts. The prisoner, in that case, offered to prove, upon the return of the *habeas corpus*, the charge of the offence upon him, in the warrant of the governor by which he was arrested, to be untrue. But this court considered the inquiry even as to probable guilt, precluded by the constitutional provision, and the law in pursuance of it. These being complied with, the right to the removal was complete under the paramount authority. Great consideration, also, we think due to the law of 1793, as a contemporaneous exposition of the constitutional provision. It was passed about four years after the adoption of the constitution, by a congress which included some of the most distinguished members of the convention. At the distance of forty years, we should hesitate long before we came to the conclusion that an error was committed in the construction of this instrument under such circumstances, and which has been ever since acquiesced in so far as we know without question. Our own statute books also show that down to 1830, no attempt had been made by state legislation to interfere with

this regulation of congress. To acknowledge the existence of such a power, we must also overlook the negative opinions of our own eminent statemen, who participated actively and zealously in the scenes of that period; many of whom, too, were adverse to the adoption of the constitution, under a belief, among others, that the power of the states was too much crippled. Whether the power of congress is exclusive or concurrent with the states it is unimportant to examine, as we have already seen in the latter case, when congress acts upon the subject it becomes entire and exclusive. While the law thus passed exists, the concurrent power of the states is suspended, and for the time is as inoperative as if it never had existed. If this principle is sound, or rather if it is settled by the authoritative expositors of all questions arising under the constitution and laws of the United States, it inevitably follows that the law of 1830 must yield. However wise and expedient we may consider its provisions, and though we might in our individual opinion give preference to the system there prescribed, for carrying into execution this clause of the constitution, we are compelled to say the one defined by the law of congress is of paramount authority. Having the power over the subject, the manner it should be carried into effect rested in their discretion, and they have left nothing to state regulation. To show that the two acts are repugnant to one another, it is not necessary to resort to the argument before referred to, that the will of congress may be discovered as well by what they have not declared as by what they have expressed. Here is direct conflict between the two powers. The very question in the case is which shall give way? Shall the certificate of the magistrate, under the law of 1793, which declares it "shall be a sufficient warrant for removing the fugitive from labour, to the state or territory from which he fled," be permitted to perform its office, or shall the writ under the state law prevent it? They are antagonist and irreconcilable powers, and the case forcibly exemplifies the impracticability and danger of the exercise of both upon the same subject, and the wisdom of the rule that forbids it. It has been said, that under the law of 1793, a free citizen might be seized and carried away into captivity, and hence the necessity of the law of the state giving to him a

trial by jury upon the question of freedom. This argument is plausible, and the justice of it difficult to deny; but, sound as it is, it tends only to prove the defectiveness of the law of congress, not the authority of the state. It would be appropriate and pertinent before that body to effect an amendment of their law, but would be a most sweeping and dangerous position if sufficient to justify the authority to amend it by state legislation. The same argument also might be used with a greater show of reason in favour of the power of the state to regulate the surrender of fugitives from justice. An innocent and unoffending citizen might be seized and removed to another state upon a charge involving his life. In the case of *Clark*, before referred to, his allegation of innocence might have been true. But the governor of this state, on the demand of the executive of the state of Rhode Island, accompanied with an affidavit, made before a magistrate of that state, was bound to give him up, and the judicial authorities could not interfere. In that case, all the substantial proceedings upon which the arrest and removal were effected were necessarily those before officers of other states. In the case under review, the proceedings are before a magistrate of our own state, presumed to possess a common sympathy with his fellow citizens, and where, upon the supposition that a freeman is arrested, he may readily procure the evidence of his freedom. If the magistrate should finally err in granting the certificate, the party can still resort to the national judiciary. The proceedings by which his rights have been invaded being under a law of congress, the remedy for error or injustice belongs peculiarly to that high tribunal. Under their ample shield the apprehension of captivity and oppression cannot be alarming. That the proceedings before the magistrate were in form under the law of the state which required the issuing of a writ of habeus corpus, (2 R. S. 560. s. 6,) I apprehend cannot materially effect the case. Whether the owner or attorney might have made the arrest in the first instance without any process, we will not stop to examine: authorities of deserved respectability and weight have held the affirmative. 2 *Pick.* 11. 5 *Serg. and Rawle*, 62; and the case of *Glen* v. *Hodges*, in this court, before referred to, seems to countenance the same conclusion. It would indeed appear to follow as a necessary consequence,

from the undoubted position, that under this clause of the constitution, the right and title of the owner to the service of the slave is as entire and perfect within the jurisdiction of the state to which, as it was in the one from which he fled. Such seizure would be at the peril of the party, and if a freeman was taken, he would be answerable like any other trespasser or kidnapper. It is sufficient for this case, that the plaintiff was brought before an officer authorized by the law of congress to hear and determine the question and grant the certificate: that such hearing did take place; and that the certificate has been given. Neither is it important to inquire whether such officer was bound to act under the law, or whether he would expose himself to the penalties of the statute of this state for proceeding in any other way than in conformity to its provisions. It is sufficient for the owner that he did act in the matter substantially in conformity to the law of 1793, and gave to him the certificate there prescribed as his authority for removal. This is a full compliance with the law under which he seeks to reclaim the fugitive, and he is entitled to the benefit of its provisions, in this if in any case, against the state law. The conclusion to which we have arrived upon the leading principles of the case supercedes the necessity of ascertaining the true meaning and effect of section 12, (2 R. S. 561,) which declares that the certificate shall authorize the person having the same to remove the fugitive through and out of the state, on the direct route to the place of the residence of the claimant. It was obviously drawn under the idea that the claimant in all possible cases would be a resident of another state. For it cannot be doubted, that under the provision of the constitution and laws, the right to this species of service is protected without regard to the residence of the owner. It is the title to such service under the laws of the state from which the fugitive fled, which brings the case within its protection. This fact must be established before the magistrate granting the certificate, and when established, the right becomes perfect. A citizen of this state is as much entitled to the benefit of this provision of the constitution as one in Louisiana or elsewhere, and the legislation of the state is as inoperative as to one as to the other. Upon any other construction the descent or devise of

this species of property to a resident of this state might operate an immediate emancipation, if the slaves fled here. Giving to the law of congress a paramount authority supersedes the importance of this question arising upon the phraseology of the state law. The conclusion to which we have arrived, sustains the first avowry of the defendant, and entitles her to judgment thereon, unless some of the formal objections were well taken, which we will hereafter shortly examine. The pleas are no answer to it, and present immaterial issues, and so far as the state courts are concerned, the right set up in the avowries is *res judicata* under the constitution and laws of the United States. The pleas to the second and third avowries take issue upon the fact alleged therein, that the plaintiff is the slave of the defendant, and a question has been raised, whether upon the record, under this view, the defendant is entitled to the judgment rendered by the Superior Court. This judgment is confined to the first avowry. From our conclusion upon the main question involved, we cannot but see, that upon the whole record the defendant is entitled to judgment, notwithstanding the issues, upon the second and third avowries, and upon the supposition they would be determined in favour of the plaintiff. (1 *Saund.* 80. n. 1. 2 *Burr*, 755. 2 *Cow.* 512.) If either alowry constitutes a good defence to the replevin suit, it is sufficient, and judgment of return must be given. The case of *Pike* v. *Gandall*, 9 *Wend.* 149, much relied on by the plaintiff recognises the above principle, and contains no authority for the position claimed. There the defendant put in five cognizances, acknowledging the taking of the goods for rent; the plaintiff did not plead, and judgment of *non pros.* passed against him. Two of the cognizances were substantially defective, and for this reason, the judgment, having been returned upon all of them, was reversed. Assuming the avowries in this case must be viewed in the light of several counts in a declaration, as the cognizances were there, the one upon which the judgment is entered well sustains it, and the others presented either immaterial issues, or the determination of them either way could not vary the rights of the parties upon the whole record so long as the first was maintained. If the issues on the second and third avowries had been tried and found for the plaintiff, the Superior

Court would have been bound to have given judgment for the defendant upon the whole record *non obstanti veredicto.* (2 *Tidd*, pl. 830. 1 *Burr*, 301. 2 *T. R.* 758. 2 *Cow.* 626.) One good count in a declaration, if sustained by proof, entitles the plaintiff to recover upon the whole record, though there may be several others which are bad or found against him, if the judgment is confined to such good count. So if one of several pleas of a defendant, which goes to the action, is sustained, it constitutes a bar to the recovery of the plaintiff. As to the formal objections to the avowry: 1. It is objected, that it is defective for omitting to set out the laws of Louisiana under which slavery is tolerated, and that the presumption of law is against their existence. No doubt, if the court are not warranted in taking official notice of the fact of the existence of slavery as a part of the public history of the country, (which I am inclined to think we are,) it is necessary for the pleader to set it forth, to enable him to prove it, like any other fact in the case. But then it is not material to spread upon the record specially the title under which slavery is claimed to exist, and the general averment in the avowry is sufficient. It would have enabled the plaintiff to have put the fact in issue, if he had chosen to place the case upon that point. Where a party relies upon the statute or common law of a foreign state or country to sustain a proceeding had under and by virtue of it; such as an action upon a foreign judgment, it is no doubt material that he should set forth so much as may enable the court to see that the proceeding is in pursuance of the authority by which it is claimed to be sustained. (3 *Wend.* 276. *Ibid*, 438. 10. *Ibid*, 74. 2 *East.* 260.) This rule of pleading I apprehend should be confined to such cases, and those that fall within the reason of them. It is in analogy to the rules of pleading applicable to courts of special and limited jurisdiction, and all others acting *quasi* judicially. We may also add, that according to the view of the case we have taken, the question of slave or not, according to the laws of the state from whence the fugitive fled, belonged to the magistrate under the law of congress, to decide, and his decision is conclusive in the matter, so far as the state courts are concerned. 2. It is objected, that the avowry contains no reference to the law under which the pro-

ceedings have been had, by which the plaintiff was seized and held in custody. The answer is, that the court is bound to take judicial notice of the constitution and the law of congress in pursuance thereof; and the facts set forth in the avowry bring the case within them, and show the certificate therein prescribed, as the authority for the detention and removal. This is a full compliance with the law under which the owner puts forth his right to reclaim, and he is entitled to the benefit of it in this if in any case. 3. It is also objected, that there is no averment in the avowry of due proof before the recorder, that the plaintiff owed service to the defendant under the laws of Louisiana. The act of congress provides, that "upon due proof to the satisfaction of such magistrate, that the person so seized or arrested doth owe service to the person claiming him or her, it shall be the duty of such magistrate to give a certificate, &c. All this is substantially averred in the avowry; besides, the decision of the magistrate and certificate is conclusive upon the fact as to the state court. 4. It is further objected, that the avowry does not state before whom the affidavit of the defendant was made. The view we have already taken of the case renders it unimportant to examine as to the regularity of the issuing of the *habeas corpus*. The act of congress provides that the proof upon which the certificate shall be granted, may be either by oral testimony or affidavit, and the averment that the recorder heard the proofs and allegations of the parties, is sufficient within this law. It will not be important to notice any further the formal objections, as they relate to proceeding under the statute of this state, which we have been compelled to put out of the case, after the fullest consideration.

SUPREME COURT.

JACK, a Negro Man,
vs.
MARY MARTIN.
} *Points for Plaintiff in Error.*

I. Congress had no power, under the constitution of the United States, to legislate upon the subject of fugitive slaves.

II. If the act of congress on this subject be constitutional, the jurisdiction thereby conferred is limited, and extends only to fugitive slaves.

III. A freeman who is taken up as a fugitive slave, has a right, at the common law, or under our statute, to the writ of *homine replegiando.*

IV. The right of trial by jury, and to be protected from unreasonable seizures and arrests, is secured by the constitution of the United States to every citizen of the United States.

V. The court below ought not to have given judgment on the whole record, so long as there were issues undisposed of which might entitle the plaintiff to judgment.

VI. The plaintiff in error, by the statutes of this state, became free, by reason of the defendant's becoming an inhabitant, resident, and citizen of this state.

VII. An officer of the state of New-York can only take such jurisdiction as our statute allows; and the defendant, by applying to a state magistrate for the remedy given by our law, has consented to be governed by the same throughout.

VIII. There is nothing in the statutes of this state, declaring or effecting the emancipation of the plaintiff contrary to the constitution of the United States.

IX. The avowry in question was insufficient in various particulars.

1. It did not show by what law the defendant was entitled to the services of the plaintiff. The law should have been set forth.
2. It did not state before whom the affidavit, laid before the recorder, was sworn.
3. It does not show that due proof was made before the recorder that defendant owed service.
4. It did not name the agent who was authorized by the recorder to take the plaintiff away.
5. It does not show such certificate as the recorder had power to issue.

R. SEDGWICK,
D. D. FIELD,
Of Counsel for Pl'ff in Error.